

WILLKIE FARR & GALLAGHER_{LLP}

1875 K Street, NW
Washington, DC 20006-123R
Tel: 202 303 1000
Fax: 202 303 2000

March 25, 2004

VIA ELECTRONIC MAIL

Docket No. 04-06
Office of the Comptroller of the Currency
250 E Street, S.W.
Washington, D.C. 20219
regs.comments@occ.treas.gov

Docket No. R-1181
Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551
regs.comments@federalreserve.gov

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429
comments@fdic.gov

Attn: 2004-04
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552
regs.comments@ots.treas.gov

RE: Community Reinvestment Act Regulations ("CRA Rule")

Dear Sirs:

On behalf of the CRA **Qualified** Investment Test Coalition, I submit this comment letter on the CRA Rule.

The CRA Qualified Investment Test Coalition was formed to monitor proposed regulatory and other changes to the qualified investment test of the Community Reinvestment Act. The Coalition strives to provide objective information to the regulatory agencies about how a proposed regulatory change likely will impact market conditions and the legal requirements relating to CRA qualified investments as well as to offer suggestions on how to improve the administration and functioning of the qualified investment test. We welcome the opportunity to comment on the CRA Rule.

In the Supplementary Information of the CRA Rule, it was stated that several institutions said there are insufficient equity investment opportunities, especially for smaller institutions and those serving rural areas. It can be difficult for financial institutions to identify suitable qualified investment opportunities. However, even for smaller institutions and for those serving rural areas, qualified investments can be found for financial institutions to successfully meet their qualified investment test requirements. These are market based investments, not grants. We agree with the regulators' concerns that some financial institutions believe they are expected to make equity investments that are economically unsound.

We also agree with the regulators' conclusion that changing the structure of the large retail institution test would not necessarily yield a substantial net benefit. Additionally, we agree with the regulators' conclusion that the freestanding investment test has become an integral part of CRA and the community development finance markets. In addition, we share the belief that evaluation of investment performance under the test has contributed substantially to the growth of the market for community development-oriented investments.

With respect to revising the asset-size threshold at which an institution becomes subject to the retail institution test as a response to comments that smaller institutions at times have had difficulty competing for investments, we believe that suitable qualified investments for such smaller institutions do exist in the marketplace. Accordingly, we would respectfully suggest that the regulators consider any changes in the asset-size threshold due to other reasons besides unavailability of qualified investments for smaller institutions.

Finally, the CRA rule notes that the regulators anticipate developing additional interagency guidance to clarify that the investment test is not intended to be a source of pressure on institutions to make imprudent equity investments. We wholeheartedly support your efforts at such clarification.

Additionally, you seek comments on other possible additional topics to be considered as part of additional interagency guidance, including:

1. When community development activities outside of assessment areas can be weighed as heavily as activities inside of assessment areas;
2. That the creation of "innovative" and "complex" are not ends in themselves, but means to the end of encouraging an institution to respond to community credit needs;
3. The weight to be given to investments from past examination periods, to commitments for future investments, and to grants; and

4. How an institution may demonstrate that an activity's "primary purpose" is to serve low- and moderate-income people.

With regard to weighing community development activities outside of assessment areas, we applaud the flexibility shown to date in regulatory rulings and interpretations regarding the CRA "credit" given to investments on a state-wide and regional area basis. We believe that further reinforcement of the rulings made to date and ~~further~~ clarification of instances when an institution can receive "credit" for an investment outside of its assessment area, but where the investment is made on a regional or state-wide basis which includes the assessment area, would be quite useful. The regulators may also wish to extend the concept applicable to limited purpose and wholesale institutions to grant credit to other types of institutions for investments outside of a pertinent assessment area if the financial institution has satisfied the investment needs within its assessment areas.

With respect to the "innovative" and "complex" determinations, it is our view that the capital markets are changing very rapidly in this area ~~so~~ much ~~so~~ that keeping up with industry investment activity in and of itself likely justifies an investment as being innovative and complex. Of course, we also support the conclusion that these are means, not ends in themselves, to encouraging an institution to respond to community credit needs.

With regard to the weight to be given to investments from past examination periods, to commitments for future investments, and to grants, we would be alarmed if grants were to be emphasized as part of the qualified investment test. Instead, we would strongly urge the continued weighting of investments from past examination periods and commitments for future investments as being the primary means to satisfy the qualified investment test; furthermore, we would recommend that the regulators not "downgrade" an institution for maintaining the same types and levels of investments in its portfolio ~~when~~ the next examination cycle commences. Rather, if those investments were suitable and appropriate for the institution when originally made, and the business model for the institution continues to provide an appropriate rationale for the continued holding of such investments, we strongly urge the regulators to affirm that decision as a sensible, prudent approach which should garner full CRA credit, and that the alternative would encourage needless churning of the institution's investment portfolio.

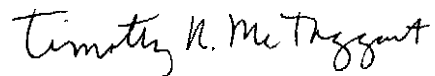
With regard to the fourth and final point Concerning an activity's "primary purpose" to serve low- and moderate-income people, we would encourage the regulators to provide more flexibility in this area. Allowing credit to be obtained when there is a mixed use of low- and moderate-income individuals, and other near low- and moderate-income individuals would be helpful. Likewise, taking a flexible approach concerning the benefits within a low- and moderate-income geography would also be very helpful; for example, further guidance on employment benefits in such a geography or other positive economic aspects ~~of~~ investment in such a geography would be useful, ~~as~~ well as special attention to near low- and moderate-income geographies in rural areas.

March 25, 2004

Page 4

We thank you for your consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Timothy R. McTaggart".

Timothy R. McTaggart

Submitted on **behalf of the**
CRA Qualified **Investment Test** Coalition